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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

2014 JUL 3 PM 3 39

COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ORIGINAL

In the Matter of:

TRI-CORE COMPANIES, LLC, an
Arizona limited liability company,

TRI-CORE MEXICO LAND
DEVELOPMENT, LLC, an Arizona
limited liability company,

TRI-CORE BUSINESS DEVELOPMENT,
LLC, an Arizona limited liability company,

ERC COMPACTORS, LLC, an Arizona
limited liability company,

ERC INVESTMENTS, LLC, an Arizona
limited liability company,

C&D CONSTRUCTION SERVICES,
INC., a Nevada corporation,

PANGAEA INVESTMENT GROUP,
LLC, an Arizona limited liability company,
d/b/a Arizona Investment Center,

JASON TODD MOGLER, an Arizona
resident,

BRIAN N. BUCKLEY and CHERYL
BARRETT BUCKLEY, husband and wife,

CASIMER POLANCHEK, an Arizona
resident,

NICOLE KORDOSKY, an Arizona
resident,

Respondents.

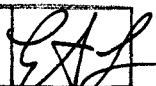
Docket No. S-20867A-12-0459

**POST-HEARING BRIEF FOR TRI-
CORE COMPANIES, LLC; TRI-
CORE BUSINESS DEVELOPMENT,
LLC; AND JASON TODD MOGLER**

(Assigned to Administrative Law Judge
Marc E. Stern)

Arizona Corporation Commission
DOCKETED

JUL 3 2014

DOCKETED BY	
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Respondents, TRI-CORE COMPANIES, LLC, TRI-CORE BUSINESS DEVELOPMENT, LLC, and JASON TODD MOGLER (collectively, the "Respondents"), through JASON TODD MOGLER, individually, and as manager of TRI-CORE COMPANIES, LLC and TRI-CORE BUSINESS DEVELOPMENT, LLC, hereby submit their Post-Hearing Brief in this docket.

I. **TRI-CORE FEBRUARY 2008 INVESTMENT**

53. From at least February 2008 until at least March 2008, Mogler and Buckley (offered and sold promissory notes issued by Tri-Core in and from Arizona.

Response

The definition of a Federal Covered Security is a security offered pursuant to the provisions of Rule 506 of Regulation D under the Securities Act of 1933.

Accordingly, securities may not be sold in the United States except by a person registered as a broker-dealer (or their agents), unless an exemption applies – the persons selling the securities must be registered or exempt. The "issuer exemption" is most commonly used for a private placement. The issuer exemption allows the directors and officers of a company to sell its securities without registering if ;

(1) The selling persons are officers, directors, or full-time employees who perform substantial duties for the Company other than selling these securities, and

(2) The selling persons are not paid compensation for their sales efforts – they can continue to receive their normal compensation, but no commissions or bonuses for selling the stock.

Since this security was exempt under Rule 506 of Reg. D, an officer or director is empowered to sell private placement memorandum s securities. If someone stated

1 that Mr. Mogler sold securities, he was empowered to do so as an officer of the
2 company. Mr. Mogler did not receive commissions.

3
4 **62. Tri-Core has not held any deeds to "Lot 5" in Mexico. Investors were not**
5 **provided a deed of trust or other mechanism to securitize their notes with any**
6 **land in Mexico purchased by Tri-Core.**

7 **Response**

8 This private placement memorandum was issued in error. The single note holder of
9 this private placement memorandum has relied on Mr. James Stevens for
10 communication regarding his investment.

11 **63. The land referenced as Lot 5 in the Tri-Core February 2008 Investment is**
12 **the same land as that "to be purchased" for the Tri-Core Mexico Investment.**
13 **The existence of both offerings to purchase the same land was not disclosed in**
14 **the offering materials to investors.**

15 **Response**

16 This private placement memorandum was issued in error. The single note holder of
17 this private placement memorandum has relied on Mr. James Stevens for
18 communication regarding his investment.

19
20 **II: TRI-CORE MARCH 2008 INVESTMENT**

21
22 **71. From at least April 2008 until at least October 2010, AIC, Mogler, and**
23 **Buckley offered and sold promissory notes issued by Tri-Core in and from**
24 **Arizona.**

25
26 **Response**

1 The definition of a Federal Covered Security is a security offered pursuant to the
2 provisions of Rule 506 of Regulation D under the Securities Act of 1933.

3 Accordingly, securities may not be sold in the United States except by a person
4 registered as a broker-dealer (or their agents), unless an exemption applies – the
5 persons selling the securities must be registered or exempt. The “issuer exemption” is
6 most commonly used for a private placement. The issuer exemption allows the
7 directors and officers of a company to sell its securities without registering if ;

8 (1) The selling persons are officers, directors, or full-time employees who perform
9 substantial duties for the Company other than selling these securities, and

10 (2) The selling persons are not paid compensation for their sales efforts – they can
11 continue to receive their normal compensation, but no commissions or bonuses for
12 selling the stock.

13 Since this security was exempt under Rule 506 of Reg. D, an officer or director is
14 empowered to sell private placement memorandum s securities. If someone stated
15 that Mr. Mogler sold securities, he was empowered to do so as an officer of the
16 company.

17
18 **79. The 3/1/08 TCC PPM and promissory notes state that the promissory notes**
19 **“are secured in the land that Tri-Core Companies LLC purchases” and “shall**
20 **be senior debt of the Maker and secured by the property”.**

21
22 **Response**

23 The land is properly titled to a Mexican company that is owned by Tri-Core
24 members. As indicated in the private placement memorandum, the property is
25 secured by a deed, issued in accordance with Mexican law. As instructed by counsel.
26
27
28

1 In accordance with verbiage in the private placement memorandum, the deed is being
2 held by Tri-Core Companies for the benefit and security of the note holders as
3 acknowledgement of its senior debt status.

4 **80 Tri-Core has not held any deeds to "Lot 47" in Mexico. Investors were not**
5 **provided a deed of trust or other mechanism to securitize their notes with any**
6 **land in Mexico purchased by Tri-Core.**

7 **Response**

8 Tri-Core does hold the deed to Lot 47 as stated it would in the private placement
9 memorandum.

10 In accordance with verbiage in the private placement memorandum, the deed is being
11 held by Tri-Core Companies for the benefit and security of the note holders as
12 acknowledgement of its senior debt status.

13
14 Deeds of trust or similar instruments do not exist in Mexico.

15
16 **81. The Tri-Core March 2008 Investment was publicly advertised using**
17 **webinars, websites, and seminars presented by Buckley.**

18 **Response**

19 This is an incorrect assumption.

20
21 The terms of the company's private placement memorandum or an announcement of
22 its private placement memorandum were not advertised by an article, notice or other
23 communication published in any newspaper, magazine, or similar media or broadcast
24 over television or radio.

25 It was inferred in the hearing that:

- 26 1) The definition of an alternative investment was given on a radio show and that
27 constituted a public offering because it was considered public advertising.
28

1 The stating of what a widely held meaning of an alternative investment is does
2 not violate the advertising requirements of Rule 506 of Regulation D.

- 3 2) Stating that when land in Mexico, which has been properly titled and is being
4 held as security for an investment, is considered a safe investment is a
5 statement of a fact. It is also an explanation of the company's business
6 practices.

7 It is widely accepted, especially in Mexico, that any property that is titled
8 correctly and held for the benefit of note holders is a safer investment than
9 property that has issues on its title.

- 10 3) That when seminars are being offered for educational purposes, without
11 mentioning any private placement memorandum or the specifics of an existing
12 private placement offering, that public advertising has been made.

13 An educational seminar on the common ways to own land in Mexico does not
14 constitute a public offering.

- 15 4) The listing of company's names on a web page does not constitute a public
16 offering.

- 17 5) Arizona Investment Center website product information required requested
18 password for any documents and was not openly available to general public.

- 19 6) No private placement memorandum was posted on any website.

- 20 7) A very important factor that must be considered is the pre-existing relationship,
21 whether personally or through business that existed with the note holders, must
22 be taken into consideration to dispel any general advertising or solicitation
23 views and opinions. Potential note holders were family and friends.

- 24 8) The number of note holders in the private placement memorandums was so
25 small, one hundred or less, is further confirmation that general advertising and
26 solicitation did not take place. Family and Friends.

1 Discussing the business of the company, such as buying property in the Sonoran area
2 of Mexico does not violate the advertising section of Reg D rule 506 requirements.

3 Webinars and seminars were for educational purposes, such as how to own property
4 in Mexico, and did not go into the particulars of the private placement offering. The
5 website offered educational seminars.

6 **83. The Tri-Core March 2008 Investment was sold by individuals and entities**
7 **that did not meet these criteria.**

8
9 **Response**

10 The definition of a Federal Covered Security is a security offered pursuant to the
11 provisions of Rule 506 of Regulation D under the Securities Act of 1933.

12 Accordingly, securities may not be sold in the United States except by a person
13 registered as a broker-dealer (or their agents), unless an exemption applies – the
14 persons selling the securities must be registered or exempt. The “issuer exemption” is
15 most commonly used for a private placement.

16 The issuer exemption allows the directors and officers of a company to sell its
17 securities without registering if ;

18 (1) The selling persons are officers, directors, or full-time employees who perform
19 substantial duties for the Company other than selling these securities, and

20 (2) The selling persons are not paid compensation for their sales efforts – they can
21 continue to receive their normal compensation, but no commissions or bonuses for
22 selling the stock.

23 Since this security was exempt under Rule 506 of Reg. D, an officer or director is
24 empowered to sell private placement memorandum s securities. If someone stated
25 that Mr. Mogler sold securities, he was empowered to do so as an officer of the
26 company. Mr. Mogler did not receive commissions.
27
28

1
2
3 **87. At all relevant times, the Tri-Core March 2008 Investment was not**
4 **registered as a security by the Commission.**

5
6 **Response**

7 A.R.S. § 44-1844(A)(1) provides a statutory exemption from registration when an
8 issuer's private offerings are exempt from registration under A.R.S. § 44-
9 1844(A)(1).

10
11 Any necessary and appropriate paperwork was filed by counsel.

12
13 **88. From at least July 2010 until at least March 2011, AIC, Mogler, Buckley, and**
14 **Polanchek offered and sold promissory notes issued by Tri-Core in and from**
15 **Arizona**

16
17 **Response**

18 The definition of a Federal Covered Security is a security offered pursuant to the
19 provisions of Rule 506 of Regulation D under the Securities Act of 1933.

20
21 Accordingly, securities may not be sold in the United States except by a person
22 registered as a broker-dealer (or their agents), unless an exemption applies – the
23 persons selling the securities must be registered or exempt. The “issuer exemption” is
24 most commonly used for a private placement. The issuer exemption allows the
25 directors and officers of a company to sell its securities without registering if ;
26 (1) The selling persons are officers, directors, or full-time employees who perform
27 substantial duties for the Company other than selling these securities, and
28

1 (2) The selling persons are not paid compensation for their sales efforts – they can
2 continue to receive their normal compensation, but no commissions or bonuses for
3 selling the stock.

4
5 Since this security was exempt under Rule 506 of Reg. D, an officer or director is
6 empowered to sell private placement memorandum s securities. If someone stated
7 that Mr. Mogler sold securities, he was empowered to do so as an officer of the
8 company. Mr. Mogler did not receive commissions.

9
10 **97. Although the 6/1/10 TCC PPM and promissory notes stated that the**
11 **promissory notes “are” or “will be secured” by the “land Tri-Core Companies**
12 **LLC purchases”, the land is not identified.**

13
14 **Response**

15 In the private placement memorandum it was stated that the promissory notes “are”
16 or “will be secured” by the “land Tri-Core Companies LLC purchases”. By using the
17 word “purchases” it was clearly stated and therefore not misleading that no land had
18 been purchased. Consequently, a specific parcel of land could not be named.

19
20 In the interest of clarity and disclosure and as stated in the business plan and
21 elsewhere, the only mention of property that would be purchased was that the
22 property to be purchased would be located in the upper Sonoran Peninsula. This is
23 exactly where the property for this private placement memorandum, that has been
24 paid for, is located.

25
26
27 No representation to any scenario was ever made to contradict these statements.
28

1 **99. Investors were not provided a deed of trust or other mechanism to securitize**
2 **their notes with any land in Mexico purchased by Tri-Core.**

3 **Response**

4 Parcel 3 located in El Golfo de Santa Clara, Mexico has been paid for and is located
5 on the coastline of the upper Sonoran Peninsula in accordance with verbiage found in
6 the private placement memorandum.

7
8 This property is in the process of being titled in accordance with Mexican law in
9 favor of Tri-Core for the security and collateral of the note holders.

10
11 **102. At all relevant times, the Tri-Core June 2010 Investment was not registered**
12 **as a security by the Commission.**

13 **Response**

14 A.R.S. § 44-1844(A)(1) provides a statutory exemption from registration when an
15 issuer's private offerings are exempt from registration under A.R.S. § 44-1844(A)(1).

16 Any necessary and appropriate paperwork was filed by counsel.
17

18 **III ERC COMPACTORS INVESTMENT**
19

20
21 **104. At all relevant times, offerees were provided a private placement**
22 **memorandum dated August 8,2011 (8/8/11 ERC PPM), a subscription**
23 **agreement, and a business plan.**

24 **Response**

25 This private placement memorandum was offered pursuant to the provisions of Rule
26 506 of Regulation D under the Securities Act of 1933.
27
28

1 **107. Despite the fact that the promissory notes were issued by ERC Compactors,**
2 **the only business plan referenced in the 8/8/11 ERC PPM or provided to offerees**
3 **was for “ERC of Nevada LLC”.**

4 **Response**

5 Section 2.1 of the private placement memorandum states:

6 **2.1 OPERATIONS**

7 ERC Compactors LLC is new division of ERC which acquired CD Construction
8 Services Corporation. CD Construction Services has been in recycling business for
9 over ten years. While ERC Compactors LLC is new divisional venture and has yet to
10 commence operations it is in the same business and augments the company's
11 recycling business. ERC Compactors LLG will supply new source of commodities
12 from new accounts such as strip malls. For complete discussion on the company,s
13 philosophy and operations please see Exhibit its business plan.

14
15 ERC Compactors LLC fell under ERC of Nevada because it was a divisional venture
16 and augmented ERC of Nevada LLC's recycling business. Because of this structure,
17 the business plan of ERC Nevada LLC was used. ERCs of Nevada's business plan
18 discussed recycling of commodities, such as cardboard, and also gave a great insight
19 into the company.

20
21 Attention was purposefully drawn to the fact that ERC of Nevada LLC's business
22 plan was being used and perspective investors were urged to read it and each investor
23 was urged to carefully review the business plan before purchasing notes.

24
25 **112. Although the 8/8/11 ERC PPM and promissory notes state that the**
26 **promissory notes “are” or “will be secured” by the “equipment/compactors**
27 **purchased”, the equipment/compactors that form the security is not identified.**
28 **Investors were provided with no information in the 8/8/11ERC PPM to**

1 **determine if there was adequate security for their investment. ERC Compactors**
2 **has never provided investors any mechanism to securitize their notes with any**
3 **collateral.**

4 **Response**

5 In FEBRUARY 2012, Irma Huerta, Javier Huerta, Luis Salazar and Luis's wife filed
6 a lawsuit in Nevada challenging Anthony A. Salazar Jr's ownership of C&D
7 Construction Services (now ERC of Nevada).

8 Because of the lawsuit, we were instructed not to take any action on ERCs behalf
9 including securing equipment that would be viewed unfavorably by the Nevada
10 Judge.

11
12 **113. The ERC Compactors Investment was publicly advertised by AIC, by radio**
13 **broadcast, and by seminars sponsored by AIC and presented by Buckley.**

14 **Response**

15
16 Tri-Core chose rule 506 of Regulation D to offer its private placement memorandums
17 because they are a Federal Covered Security and are a " Safe Harbor" for private
18 offering exemptions under Section 4(2) of the securities act.

19 Tri-Core met and satisfied the Section 4(2) exemption by satisfying the following
20 standard:

- 21
 - The company cannot use general solicitation or advertising to market the
- 22 securities.

23 The SEC defines General Solicitation as:

24 "General solicitation" includes advertisements published in newspapers and
25 magazines, public websites, communications broadcasted over television and radio,
26 and seminars where attendees have been invited by general solicitation or general
27 advertising. In addition, the use of an unrestricted, and therefore publicly available,
28 website constitutes general solicitation.

1 The solicitation must be an "offer" of securities, but solicitations that condition the
2 market for an offering of securities may be considered to be offers.

3 Tri-Core did not publically advertise any of the particulars of their offerings. The
4 radio show specifically contained a disclaimer stating the show was not selling nor
5 soliciting the sale of securities. This disclaimer was repeated several times during the
6 broadcast.

7 Discussing the business of the company, such as recycling, does not violate the
8 advertising section of Reg. D rule 506 requirements.

9 Seminars were for educational purposes discussing recycling and did not go into the
10 particulars of the private placement offering.

11 **116. At all relevant times, the ERC Compactors Investment was not registered
12 as a security by the Commission**

13 **Response**

14 A.R.S. § 44-1844(A)(1) provides a statutory exemption from registration when an
15 issuer's private offerings are exempt from registration under A.R.S. § 44-1844(A)(1).

16 Any necessary and appropriate paperwork was filed by counsel.

17
18 **IV ERCI INVESTMENT**

19
20 **117. From at least January 2012, AIC, Mogler, and Kordosky offered
21 promissory notes issued by ERC Investments in and from Arizona.**

22 **Response**

23 The definition of a Federal Covered Security is a security offered pursuant to the
24 provisions of Rule 506 of Regulation D under the Securities Act of 1933.

25
26 Accordingly, securities may not be sold in the United States except by a person
27 registered as a broker-dealer (or their agents), unless an exemption applies – the
28

1 persons selling the securities must be registered or exempt. The “issuer exemption” is
2 most commonly used for a private placement. The issuer exemption allows the
3 directors and officers of a company to sell its securities without registering if ;

4 (1) The selling persons are officers, directors, or full-time employees who perform
5 substantial duties for the Company other than selling these securities, and

6 (2) The selling persons are not paid compensation for their sales efforts – they can
7 continue to receive their normal compensation, but no commissions or bonuses for
8 selling the stock.

9
10 Since this security was exempt under Rule 506 of Reg. D, an officer or director is
11 empowered to sell private placement memorandum s securities. If someone stated
12 that Mr. Mogler sold securities, he was empowered to do so as an officer of the
13 company. Mr. Mogler did not receive commissions.

14
15 **126. The 12/2/11 ERCI PPM states, “[d]elivery of the [subscription documents],**
16 **together with a check to be addressed to the Company as follows: ERC**
17 **INVESTMENTS LLC, c/o Arizona Investment Center, 8800 E. Chaparral Road,**
18 **Suite 270, Scottsdale, AZ 85250.”**

19
20 **Response**

21 ERC Investments never raised Capital. It was a company formed solely to be used as
22 an ownership company, separate from ERCI, that never had any funds in it other
23 than a minimal balance (approximately \$100) for formation purposes only.
24
25
26
27
28

1 **127. The subscription agreement and promissory note sent to the offeree for the**
2 **ERC Investment were drafted for signature by Mogler on behalf of ERC**
3 **Investments.**

4
5
6
7 **Response**

8 ERC Investments never issued a private placement memorandum. It was a company
9 formed solely to be used as an ownership company, separate from ERCI (ERC
10 Illinois), that never had any funds in it other than a minimal balance (approximately
11 \$100) for formation purposes only.

12 Tri-Core Business Development was hired by ERCI to assist in the growth of the
13 company. Accordingly Mr. Mogler contractually had the right to sign notes on behalf
14 of ERCI.

15
16
17 **VIOLATION OF A.E.S. S 44-1841**
18 **(Offer or Sale of Unregistered Securities)**

19 **143. From at least February 2007 until at least April 2008, Tri-Core BD, Mogler,**
20 **and Buckley offered or sold securities in the form of promissory notes and/or**
21 **investment contracts issued by Tri-Core Mexico.**

22
23
24 **Response**

25 The definition of a Federal Covered Security is a security offered pursuant to the
26 provisions of Rule 506 of Regulation D under the Securities Act of 1933.

1 Accordingly, securities may not be sold in the United States except by a person
2 registered as a broker-dealer (or their agents), unless an exemption applies – the
3 persons selling the securities must be registered or exempt. The “issuer exemption” is
4 most commonly used for a private placement. The issuer exemption allows the
5 directors and officers of a company to sell its securities without registering if ;
6 (1) The selling persons are officers, directors, or full-time employees who perform
7 substantial duties for the Company other than selling these securities, and
8 (2) The selling persons are not paid compensation for their sales efforts – they can
9 continue to receive their normal compensation, but no commissions or bonuses for
10 selling the stock.

11
12 Since this security was exempt under Rule 506 of Reg. D, an officer or director is
13 empowered to sell private placement memorandum s securities. If someone stated
14 that Mr. Mogler sold securities, he was empowered to do so as an officer of the
15 company. Mr. Mogler did not receive commissions.

16
17 **144. From at least February 2008 until at least March 2008, Mogler and Buckley**
18 **offered or sold securities in the form of promissory notes and/or investment**
19 **contracts issued by Tri-Core.**

20
21
22 The definition of a Federal Covered Security is a security offered pursuant to the
23 provisions of Rule 506 of Regulation D under the Securities Act of 1933.

24 **Response**

25 Accordingly, securities may not be sold in the United States except by a person
26 registered as a broker-dealer (or their agents), unless an exemption applies – the
27 persons selling the securities must be registered or exempt. The “issuer exemption” is
28

1 most commonly used for a private placement. The issuer exemption allows the
2 directors and officers of a company to sell its securities without registering if ;

3 (1) The selling persons are officers, directors, or full-time employees who perform
4 substantial duties for the Company other than selling these securities, and

5 (2) The selling persons are not paid compensation for their sales efforts – they can
6 continue to receive their normal compensation, but no commissions or bonuses for
7 selling the stock.

8
9 Since this security was exempt under Rule 506 of Reg. D, an officer or director is
10 empowered to sell private placement memorandum s securities. If someone stated
11 that Mr. Mogler sold securities, he was empowered to do so as an officer of the
12 company. Mr. Mogler did not receive commissions.

13 **145. From at least April 2008 until at least October 2010, AIC, Mogler, and**
14 **Buckley offered or sold securities in the form of promissory notes and/or**
15 **investment contracts issued by Tri-Core.**

16
17 **Response**

18 The definition of a Federal Covered Security is a security offered pursuant to the
19 provisions of Rule 506 of Regulation D under the Securities Act of 1933.

20
21 Accordingly, securities may not be sold in the United States except by a person
22 registered as a broker-dealer (or their agents), unless an exemption applies – the
23 persons selling the securities must be registered or exempt. The “issuer exemption” is
24 most commonly used for a private placement. The issuer exemption allows the
25 directors and officers of a company to sell its securities without registering if ;
26 (1) The selling persons are officers, directors, or full-time employees who perform
27 substantial duties for the Company other than selling these securities, and
28

1 (2) The selling persons are not paid compensation for their sales efforts – they can
2 continue to receive their normal compensation, but no commissions or bonuses for
3 selling the stock.

4
5 Since this security was exempt under Rule 506 of Reg. D, an officer or director is
6 empowered to sell private placement memorandum s securities. If someone stated
7 that Mr. Mogler sold securities, he was empowered to do so as an officer of the
8 company. Mr. Mogler did not receive commissions.

9 **146. From at least July 2010 until at least March 2011, AIC, Mogler, Buckley,**
10 **and Polanchek offered or sold securities in the form of promissory notes and/ or**
11 **investment contracts issued by Tri-Core.**

12 **Response**

13 The definition of a Federal Covered Security is a security offered pursuant to the
14 provisions of Rule 506 of Regulation D under the Securities Act of 1933.

15
16 Accordingly, securities may not be sold in the United States except by a person
17 registered as a broker-dealer (or their agents), unless an exemption applies – the
18 persons selling the securities must be registered or exempt. The “issuer exemption” is
19 most commonly used for a private placement. The issuer exemption allows the
20 directors and officers of a company to sell its securities without registering if ;

21 (1) The selling persons are officers, directors, or full-time employees who perform
22 substantial duties for the Company other than selling these securities, and

23 (2) The selling persons are not paid compensation for their sales efforts – they can
24 continue to receive their normal compensation, but no commissions or bonuses for
25 selling the stock.
26
27
28

1 Since this security was exempt under Rule 506 of Reg. D, an officer or director is
2 empowered to sell private placement memorandum s securities. If someone stated
3 that Mr. Mogler sold securities, he was empowered to do so as an officer of the
4 company. Mr. Mogler did not receive commissions.

5
6 **148. From at least January 2012, AIC, Mogler, and Kordosky offered or sold**
7 **securities in the form of promissory notes and/or investment contracts issued by**
8 **ERC Investments.**

9
10 **Response**

11 ERC Investments never issued a private placement memorandum. It was a company
12 formed solely to be used as an ownership company that never had any funds in it
13 other than a minimal balance (approximately \$100) for formation purposes only.

14 **150. The securities referred to above were not registered pursuant to Articles 6**
15 **or 7 of the Securities Act.**

16 **Response**

17 Per the US Securities and Exchange Commission securities offered pursuant to the
18 provisions of Rule 506 of Regulation D under the Securities Act of 1933 are
19 Federally Covered Securities and are exempt from registration.

20 Any necessary and appropriate paperwork was filed by counsel.

21 **151. This conduct violates A.R.S. 0 44-1 84 1.**

22 **Response**

23 Per the US Securities and Exchange Commission securities offered pursuant to the
24 provisions of Rule 506 of Regulation D under the Securities Act of 1933 are
25 Federally Covered Securities and are exempt from registration.

26 **A.R.S. 044-1841 also states that the securities comply with section 44-1843.02 or**
27 **chapter 13, article 12 of this title which is addressed as follows:**
28

Response

It was inferred that Tri-Companies LLC publically advertised its private placement memorandum. This is an incorrect assumption. The terms of the company's private placement memorandum or an announcement of its private placement memorandum were not advertised by an article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio.

It was inferred in the hearing that:

- 9) The definition of an alternative investment was given on a radio show and that constituted a public offering because it was considered public advertising.

The stating of what a widely held meaning of an alternative investment is does not violate the advertising requirements of Rule 506 of Regulation D.

- 10) Stating that when land in Mexico, which has been properly titled and is being held as security for an investment, is considered a safe investment is a statement of a fact. It is also an explanation of the company's business practices.

It is widely accepted, especially in Mexico, that any property that is titled correctly and held for the benefit of note holders is a safer investment than property that has clouds on its title.

- 11) That when seminars are being offered for educational purposes, without mentioning any private placement memorandum or the specifics of an existing private placement offering, that public advertising has been made.

An educational seminar on the common ways to own land in Mexico does not constitute a public offering.

- 12) The listing of company's names on a web page does not constitute a public offering.

- 13) Arizona Investment Center website product information required requested password for any documents and was not openly available to general public.

- 14) No private placement memorandum was posted on any website.

- 15) The Internet was not used to advertise or even announce that the company was selling stock or seeking investors

16) A very important factor that must be considered is the pre-existing relationship, whether personally or through business that existed with the note holders, must be taken into consideration to dispel any general advertising or solicitation views and opinions.

17) The number of note holders in the private placement memorandums was so small, one hundred or less, is further confirmation that general advertising and solicitation did not take place.

Unfortunately, only fragments of sentences were read in the hearing that professed to indicate advertising. This tactic did not allow the listener to hear the full sentence or paragraph from which the fragments of sentences were taken from.

What was not mentioned in the hearing was the radio show disclaimer which was voiced several times throughout the show. The disclaimer stated that neither the show nor any company discussed on the show was not offering or selling securities. With such a clear and understandable disclaimer, great care was taken to let the listening audience know it was not publically advertising any offering.

VI VIOLATION OF A.E.S. S 44-1842

(Transactions by Unregistered Dealers or Salesmen)

152. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

Response

The definition of a Federal Covered Security is a security offered pursuant to the provisions of Rule 506 of Regulation D under the Securities Act of 1933.

Accordingly, securities may not be sold in the United States except by a person registered as a broker-dealer (or their agents), unless an exemption applies – the persons selling the securities must be registered or exempt. The “issuer exemption” is

most commonly used for a private placement. The issuer exemption allows the directors and officers of a company to sell its securities without registering if ;

(1) The selling persons are officers, directors, or full-time employees who perform substantial duties for the Company other than selling these securities, and

(2) The selling persons are not paid compensation for their sales efforts – they can continue to receive their normal compensation, but no commissions or bonuses for selling the stock.

Since this security was exempt under Rule 506 of Reg. D, an officer or director is empowered to sell private placement memorandum s securities. If someone stated that Mr. Mogler sold securities, he was empowered to do so as an officer of the company. Mr. Mogler did not receive commissions.

153. This conduct violates A.R.S. 5 44-1842.

Response

The definition of a Federal Covered Security is a security offered pursuant to the provisions of Rule 506 of Regulation D under the Securities Act of 1933.

Accordingly, securities may not be sold in the United States except by a person registered as a broker-dealer (or their agents), unless an exemption applies – the persons selling the securities must be registered or exempt. The “issuer exemption” is most commonly used for a private placement. The issuer exemption allows the directors and officers of a company to sell its securities without registering if ;

(1) The selling persons are officers, directors, or full-time employees who perform substantial duties for the Company other than selling these securities, and

1 (2) The selling persons are not paid compensation for their sales efforts – they can
2 continue to receive their normal compensation, but no commissions or bonuses for
3 selling the stock.

4 Since this security was exempt under Rule 506 of Reg. D, an officer or director is
5 empowered to sell private placement memorandum s securities. If someone stated
6 that Mr. Mogler sold securities, he was empowered to do so as an officer of the
7 company. Mr. Mogler did not receive commissions.

8 9 VII VIOLATION OF A.E.S. S 44-1991

10
11
12 **154. In connection with the offer or sale of securities within or from Arizona,**
13 **Respondents Directly or indirectly: (i) employed a device, scheme, or artifice to**
14 **defraud; (ii) made untrue statements of material fact or omitted to state material**
15 **facts that were necessary in order to make the statements made not misleading**
16 **in light of the circumstances under which they were made; or (iii) engaged in**
17 **transactions, practices, or courses of business that operated or would operate as**
18 **a fraud or deceit upon offerees and investors. Respondents' conduct includes,**
19 **but is not limited to, the following:**

- 20
21 a) **Failing to use investor funds to purchase land in Mexico as**
22 **referenced in the in the Tri-Core Mexico Investment investor materials;**

23 24 Response

25 When an issue concerning the title on Lot 5 was found out, TCBD immediately
26 explored and addressed this issue and stopped raising money for this property. Mr.
27
28

1 Stevens notified the note holders. Mr. Stevens has formed a committee of investors
2 that along with him, are continuing to work to resolve this issue.

3
4 **b) Failing to disclose that Stevens had outstanding tax liens totaling at least**
5 **approximately \$200,000;**

6 **Response**

7 James L Stevens had the responsibility to disclose important facts about him.

8
9 **c) Representing that the investor's investments would be secured by property**
10 **in Mexico, but failing to provide investors with a deed of trust or other**
11 **mechanism to securitize their notes;**

12
13 **Response**

14 Mr. Stevens addressed this issue with investors in updates and also had several
15 meetings with investors regarding the title issue.

16 The investors signed a letter acknowledging the issue and gave Mr. Stevens an
17 extension unlimited to deliver the property.

18 Mr. Stevens has formed a committee of investors that along with him, are continuing
19 to work to resolve this issue.

20
21 **d) Representing in the 7/1/07 TCM PPM that offering expenses would not exceed**
22 **\$350,000 for the offering, but failing to disclose that an Independent Contractor**
23 **Agreement between Tri-Core Mexico and Tri-Core BD required \$925,000 in**
24 **compensation to Tri-Core BD from Tri-Core Mexico from the investment**
25 **proceeds;**

26
27 **Response**

1 Tri-Core BD was responsible for the disbursement of \$925,000 in funds as stated in
2 the Use of Funds section of the private placement memorandum. The \$925,000 was
3 detailed in the Use of Funds and funds were released as directed by Mr. Stevens.

4
5 **e) Representing in the 7/1/07 TCM PPM that the Tri-Core Mexico Investment**
6 **may be sold by “registered brokers or dealers who are members of the NASD**
7 **and who enter into a Participating Dealer Agreement with the Company”,**
8 **“qualified Broker Dealers” or “Registered Investment Advisors”, and that those**
9 **individuals could receive commissions “up to” 10% of the price of the notes sold,**
10 **when the Tri-Core Mexico Investment was sold by individuals and entities that**
11 **did not meet these criteria.**

12
13 **Response**

14 In the private placement memorandum, item 5, Plan of Distribution states:

15 **5. PLAN OF DISTRIBUTION**

16 **5.1 OFFERING OF NOTES**

17 The Notes will be offered to prospective lenders by Officers and Directors of
18 the Company and qualified licensed personnel, pursuant to State and Federal
19 security rules and regulations. This Offering is made solely through this
20 Private Placement Memorandum and without any form of general solicitation
21 or advertising. The Company and its Officers and Directors or other
22 authorized personnel will use their best efforts during the Offering period to
23 find eligible Investors who desire to subscribe to the Notes in the Company.
24 These Notes are offered on a “best efforts” basis, and there is no assurance that
25 any or all of the Notes will be closed. The Company has the authorization to
26 offer fractional Notes at its sole discretion. The Offering period will begin as
27 of the date of this private Offering Memorandum and will close upon the
28 happening of such occurrences as defined herein (see “**TERMS OF THE OFFERING**”).

5.2 PAYMENTS TO BROKER DEALERS OR INVESTMENT ADVISORS

The Company has the power to pay fees or commissions to qualified Broker Dealers, Registered Investment Advisors or any other person qualified under other applicable federal and state security laws.

In addition to stating that the Tri-Core investment may be sold by “registered brokers or dealers, the private placement memorandum also stated that any officer or principal had the right to sell notes as evidenced by section 5.1 which states: The Notes will be offered to prospective lenders by Officers and Directors of the Company.

Securities may not be sold in the United States except by a person registered as a broker-dealer (or their agents), unless an exemption applies – the persons selling the securities must be registered or exempt. The “issuer exemption” is most commonly used for a private placement. The issuer exemption allows the directors and officers of a company to sell its securities without registration.

Since this private placement offering was issued under Rule 506 of Regulation D under the Securities Act of 1933, it was a covered security.

A covered security allows the sale of the company’s securities because of the following definition:

The definition of a Federal Covered Security is a security offered pursuant to the provisions of Rule 506 of Regulation D under the Securities Act of 1933.

Accordingly, securities may not be sold in the United States except by a person registered as a broker-dealer (or their agents), unless an exemption applies – the persons selling the securities must be registered or exempt. The “issuer exemption” is most commonly used for a private placement. The issuer exemption allows the directors and officers of a company to sell its securities without registering if ;

1 (1) The selling persons are officers, directors, or full-time employees who perform
2 substantial duties for the Company other than selling these securities, and

3 (2) The selling persons are not paid compensation for their sales efforts – they can
4 continue to receive their normal compensation, but no commissions or bonuses for
5 selling the stock.

6 Since this security was exempt under Rule 506 of Reg. D, an officer or director is
7 empowered to sell private placement memorandum s securities. If someone stated
8 that Mr. Mogler sold securities, he was empowered to do so as an officer of the
9 company. Mr. Mogler did not receive commissions.

10
11 **Fraud Related to Tri-Core February 2008 Investment.**
12

13
14 **f) Representing that investor's investments would be secured by property in**
15 **Mexico, but failing to provide investors with a deed of trust or other mechanism**
16 **to securitize their notes;**

17 **Response**

18 This private placement memorandum was issued in error. The single note holder of
19 this private placement memorandum has relied on Mr. James Stevens for
20 communication regarding his investment in Lot 5 (Tri-Core Mexico Investment) .
21

22
23 **g) Failing to disclose that the land to be purchased by Tri-Core in the Tri-Core**
24 **February 2008 Investment, Lot 5, had also been offered and sold to investors in**
25 **the Tri-Core Mexico Investment;**
26
27
28

Response

This private placement memorandum was issued in error. The single note holder of this private placement memorandum has relied on Mr. James Stevens for communication regarding his investment in Lot 5 (Tri-Core Mexico Investment).

h) Representing in the 2/1/08 TCC PPM that the Tri-Core February 2008 Investment may be sold by “registered brokers or dealers who are members of the NASD and who enter into a Participating Dealer Agreement with the Company”, and “qualified licensed personnel, pursuant to State and Federal security rules and regulations”, and that those individuals could receive Commissions “up to” 10% of the price of the notes sold, when the Tri-Core February 2008 Investment was sold by individuals and entities that did not meet these criteria.

Response

This private placement memorandum was issued in error. The single note holder of this private placement memorandum has relied on Mr. James Stevens for communication regarding his investment in Lot 5 (Tri-Core Mexico Investment).

Fraud related to Tri-Core March 2008 Investment

i) Representing that the alternative investments in Mexico land were “safe” because they are secured;

Response

The purchase of Lot 47 was presided over and completed by two Mexican Attorneys.

In Mexico, every legal document, such as deeds, wills, powers of attorney, constitution of corporations, establishment of trusts and other legal transactions must be made before a notary public in order to be valid. If the document is not notarized by a Mexican notary public it is not legal. A Mexican Notario presided over the actual transfer of title thereby insuring a legal transfer of title.

j) Representing that investor's investments would be secured by property in Mexico, but failing to provide investors with a deed of trust or other mechanism to securitize their notes

Response

Deed of Trusts do not exist in Mexico therefore could not be given. Since it was voiced that some of the note holders did not want to be directly on title, many options were explored and discussed with attorneys. It was decided that the best way to protect the note holders interest in Lot 47 is to have them registered with the Mexican Government in their registry. Steps are being taken to complete this process.

j) Representing the Mexican property purchased, Lot 47, would be owned by Tri- Core, but failing to purchase the land under the company name;

Response

Under Mexican law, it is not possible to own Lot 47 in the name of Tri-Core Companies LLC or by a deed of trust. Deeds of trust do not exist in Mexico.

1 According to our Mexican attorney the only way to own property such as Lot 47
2 legally in Mexico by non- Mexican residents in the restricted zone (where Lot 47 is
3 located and described below), is to form a S.de R.L.

4 The Restricted Zone in Mexico (known in the past as the "Prohibited Zone") is set up
5 in the Mexican Federal Constitution. It is: (1) the land area within 100 kilometers of
6 Mexico's international land borders (with U.S., Belize and Guatemala) (all of the
7 border towns and a little more); and (2) the land area within 50 kilometers of
8 Mexico's ocean front areas (the coast line of Mexico). Lot 47 falls into the second
9 category since it is beachfront property.
10

11 In the Restricted Zone foreigners to Mexico cannot own direct (fee simple) title to
12 real estate located therein. They can however hold the title thereto via the long term
13 irrevocable bank title transfer trust or via a Mexican corporation (depending upon the
14 use of the property). Due to the size of the property and that it is raw beachfront
15 property, title to the property had to be held by a Mexican corporation.
16

17 Following Mexican law, title to Lot 47 is in the name of a S. de R.L.
18

19 There was no representation in the private placement memorandum regarding the
20 entity that would be on title for Lot 47. At the time of the private placement
21 memorandum, how the property would be titled was still in question. There was a
22 possibility that a Mexican citizen might have been involve on title.
23

24 **k) Representing the Mexican property purchased, Lot 47, would be owned by**
25 **Tri- Core, but failing to purchase the land under the company name;**
26
27
28

Response

There was no representation in the private placement memorandum regarding the entity that would own lot 47.

Under Mexican law, it is not possible to own Lot 47 in the name of Tri-Core Companies LLC or by a deed of trust. Deeds of trust do not exist in Mexico.

According to our Mexican attorney the only way to own property such as Lot 47 legally in Mexico by non- Mexican residents in the restricted zone (where Lot 47 is located and described below), is to form a S.de R.L.

The Restricted Zone in Mexico (known in the past as the "Prohibited Zone") is set up in the Mexican Federal Constitution. It is: (1) the land area within 100 kilometers of Mexico's international land borders (with U.S., Belize and Guatemala) (all of the border towns and a little more); and (2) the land area within 50 kilometers of Mexico's ocean front areas (the coast line of Mexico). Lot 47 falls into the second category since it is beachfront property.

In the Restricted Zone foreigners to Mexico cannot own direct (fee simple) title to real estate located therein. They can however hold the title thereto via the long term irrevocable bank title transfer trust or via a Mexican corporation (depending upon the use of the property). Due to the size of the property and that it is raw beachfront property; title to the property had to be held by a Mexican corporation.

Following Mexican law, title to Lot 47 is in the name of a S. de R.L.

1) Representing in the 3/1/08 TCC PPM that the Tri-Core March 2008 Investment may be sold by “registered brokers or dealers who are members of the NASD and who enter into a Participating Dealer Agreement with the Company”, and “qualified licensed personnel, pursuant to State and Federal security rules and regulations”, and that those individuals could receive commissions “up to” 10% of the price of the notes sold, when the Tri-Core March 2008 Investment was sold by individuals and entities that did not meet these criteria;

Response

In the private placement memorandum, item 5, Plan of Distribution states:

5. PLAN OF DISTRIBUTION

5.1 OFFERING OF NOTES

The Notes will be offered to prospective lenders by Officers and Directors of the Company and qualified licensed personnel, pursuant to State and Federal security rules and regulations. This Offering is made solely through this Private Placement Memorandum and without any form of general solicitation or advertising. The Company and its Officers and Directors or other authorized personnel will use their best efforts during the Offering period to find eligible Investors who desire to subscribe to the Notes in the Company. These Notes are offered on a “best efforts” basis, and there is no assurance that any or all of the Notes will be closed. The Company has the authorization to offer fractional Notes at its sole discretion. The Offering period will begin as of the date of this private Offering Memorandum and will close upon the happening of such occurrences as defined herein (see “**TERMS OF THE OFFERING**”).

5.2 PAYMENTS TO BROKER DEALERS OR INVESTMENT ADVISORS

The Company has the power to pay fees or commissions to qualified Broker Dealers, Registered Investment Advisors or any other person qualified under other applicable federal and state security laws.

In addition to stating that the Tri-Core investment may be sold by “registered brokers or dealers, the private placement memorandum also stated that any officer or principal had the right to sell notes as evidenced by section 5.1 which states: The Notes will be offered to prospective lenders by Officers and Directors of the Company.

Securities may not be sold in the United States except by a person registered as a broker-dealer (or their agents), unless an exemption applies – the persons selling the securities must be registered or exempt. The “issuer exemption” is most commonly used for a private placement. The issuer exemption allows the directors and officers of a company to sell its securities without registration.

Since this private placement offering was issued under Rule 506 of Regulation D under the Securities Act of 1933, it was a covered security.

A covered security allows the sale of the company’s securities because of the following definition:

The definition of a Federal Covered Security is a security offered pursuant to the provisions of Rule 506 of Regulation D under the Securities Act of 1933.

Accordingly, securities may not be sold in the United States except by a person registered as a broker-dealer (or their agents), unless an exemption applies – the persons selling the securities must be registered or exempt. The “issuer exemption” is most commonly used for a private placement. The issuer exemption allows the directors and officers of a company to sell its securities without registering if ;

1 (1) The selling persons are officers, directors, or full-time employees who perform
2 substantial duties for the Company other than selling these securities, and

3 (2) The selling persons are not paid compensation for their sales efforts – they can
4 continue to receive their normal compensation, but no commissions or bonuses for
5 selling the stock.

6
7 Tri-Core disclosed the fact that it had an option of entering into a Participating Dealer
8 Arrangement if it chose to do so. Tri-Core did not state that it has entered into such an
9 arrangement or contemplated entering into such an agreement.

10
11 **Fraud Related to Tri-Core June 2010 Investment**

12
13 **m) Representing that the alternative investments in Mexico land were**
14 **“safe” because they are secured**

15
16
17 1) Discussing the safety of investing in property that is legally titled and the
18 fact that the title is being held by the company as security for the note
19 holders is not a fraudulent statement

20 2) It was clearly stated in the private purchase memorandums that:

21 A) The Notes being offered by the Company in this Private
22 Placement Offering are secured by the land Tri-Core Companies LLC
23 purchases. Tri-Core Companies LLC will establish an administration
24 account which will hold the title to the property until all note holders
25 will be paid in full.

26
27 B) The Note shall be senior debt of the Maker and secured by the
28 property.

1 In either case, the statement of an fact does not constitute fraud especially as in the
2 case of the second point, it is how the title is being held is clearly stated in the private
3 placement memorandum.

4
5 **n) Representing that investments offered by AIC, which included the Tri-Core**
6 **June 2010 Investment, placed investors in a first secured position, which**
7 **protected them from any default in payment;**

8 **Response**

9 When the property, Lot 3, is purchased in accordance with Mexican law, the note
10 holders will be in a first secured position. Since the property cannot be sold without
11 paying off the note holders, they are protected.

12 **O) Representing that the investor's investments would be secured by**
13 **property in Mexico, but failing to provide investors with a deed of trust or**
14 **other mechanism to securitize their Notes.**

15
16 **Response**

17 Deed of Trusts do not exist in Mexico therefore could not be given.

18 A Mexican Notario will be presiding over the actual transfer of title for Lot 3
19 thereby insuring a legal transfer of title for this property will occur for the note-
20 holders benefit. When the title transfer is complete, the note-holders will be
21 notified.
22
23
24
25
26
27
28

Fraud Related to ERC Compactors Investment

p) Representing that the ERC recycling investments “provides an opportunity for . . . the investor . . . a safe place to put their money”;

q) Representing that the investor’s investments would be secured by the “equipment/compactors purchased”, but failing to provide investors with a mechanism to securitize their notes;

Response

In FEBRUARY 2012, Irma Huerta, Javier Huerta, Luis Salazar and Luis’s wife filed a lawsuit in Nevada challenging Anthony A. Salazar Jr’s ownership of C&D Construction Services (now ERC of Nevada).

Because of the lawsuit, we were instructed not to take any action on ERCs behalf including securing equipment that would be viewed unfavorably by the Nevada Judge. Accordingly, as instructed by counsel, the equipment was not secured.

Fraud Related to C&D Investment

Tri-Core Business Development was hired by Anthony A. Salazar Jr., owner of C&D, to assist Mr. Salazar Jr. in the growth of his company.

Accordingly, Mr. Salazar directed Tri-Core business, via a written contract and empowered Tri-Core Business Development via a limited power of attorney to act on Mr. Salazar’s company on his behalf as directed by Mr. Salazar Jr.

Conclusion:

Under the Securities Act of 1933, any offer to sell securities must either be registered with the United States Securities and Exchange Commission (SEC) or be exempt them from such registration.

Rule 506 of Regulation D allows small companies to raise money for its ventures without the costs of a normal SEC registration. Rule 506 of Regulation D provides a safe harbor for a private offering exemption under Section 4(a)(2) of the Securities Act. Because of the safe harbor and offering exemptions, the Companies referenced in this response chose Rule 506 of Regulation D to offer their private placement memorandums.

To preserve the safe harbor and private offering exemptions of Rule 506 of Regulation D attention to items such as: to disclosure was given to details such as:

- A) Making sure that no public advertising took place. The terms of the company's private placement memorandum or an announcement of its private placement memorandum were not advertised by an article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio.
- B) Ensuring that public seminars were educational.
- C) Readers would know that their securities were restricted
- D) At all times there was plenty of language regarding different risks involved throughout the private placement memorandum
- E) There was ample language throughout the private placement memorandum urging readers to consult with others regarding the private placement memorandum.
- F) Readers were urged to ask questions numerous times in the private placement memorandum
- G) Readers were asked to visit any properties discussed in the private placement memorandum

Statements, such as one given by Mr. Mark Sherman's in his testimony regarding the lack of a completed investor questionnaire in his private placement memorandum would have one believe that Tri-Core did not adhere to good practices regarding Rule

1 506 of Regulation D and acted in a deceitful and fraudulent manor. During Mr. Mark
2 Sherman's testimony, he stated that his investor questionnaire was not completed.

3 What he failed to state was that he told Mr. Buckley that it was not necessary to
4 complete the investor questionnaire on his copy. That is the reason the questionnaire
5 referred to in the hearing was blank – it was at his directive.

6 All reasonable precautions were used to preserve the exemption and safe harbor
7 provision of Rule 506 of Regulation D.

8 Potential note holders were encouraged to seek others for advice on the private
9 placement memorandums and also to contact the company to they wanted to ask.
10 Site visits were offered to all potential note holders encouraging them to visit the
11 properties or the area in which properties were to be purchased. Companies were not
12 acting in a deceitful or fraudulent manor. These offers were viewed as the company's
13 dedication to transparency in its business philosophy – not as a deceitful scheme or
14 fraud.

15 It is very important to state that the number of investors were very small and probably
16 did not exceed 100 note holders who were considered either friends ,or family or a
17 business relationship existed. Despite Mr. Sherman's testimony, he was a friend of
18 Casimer Polanchek. On numerous occasions, Mr. Sherman introduced Mr.
19 Polanchek to people as his cousin. Also, as a family friend, Mr. Polanchek visited
20 Ms. Majorie Katz, Mr. Sherman's mother, at her home in Missouri on several
21 occasions. Mr. Sherman failed to advise the court that Mr. Polanchek was to be or
22 was named in his will. Mr. Polanchek and Mr. Sherman were also business partners.
23 They formed a Nevada LLC known as Space Alloys LLC.

24 Mr. Mark Sherman stated that he lost money, along with his mother, as a result of his
25 investment. What Mr. Sherman failed to state was that he approached ERC Chicago
26 to invest in that company as an owner, not a note holder. The consideration for this
27 ownership was Mr. Sherman requested that his existing notes be marked satisfied in
28

1 return for equity ownership in ERC Chicago. After considering the following
2 benefits:

- 3 ● Mr. Sherman's domestic business knowledge and experience
- 4 ● Mr. Sherman's success in international business with Floatron and Fuel Fresh
- 5 ● Mr. Sherman's commitment to the environment
- 6 ● Mr. Sherman's wealth

7 In the best interest of ERC Chicago and its note holders, Mr. Sherman's request was
8 granted. Accordingly, Mr. Sherman's notes were satisfied as he requested and Mr.
9 Mogler reduced TCBD's fee owed by ERC Chicago by that amount. Subsequently
10 Mr. Sherman also invested additional money directly into ERC Chicago.

11 Mr. Sherman also testified that his Mother, Marjorie Katz, lost money. What Mr.
12 Sherman failed to state was her request for the same consideration in ERC Chicago as
13 Mr. Sherman received. Mrs. Katz is a very wealthy individual who has a successful
14 track record in real estate and is a successful businesswoman. ERC Chicago is still in
15 operation. Mr. Quinn who is Mark Sherman's business partner recently sent out a
16 letter to the note holders stating that the company is getting back on track and doing
17 well.

18 Mr. Wong stated during the hearing that he invested in a duplicate of the original Lot
19 5 promissory note which he called a Ponzi scheme. What Mr. Wong failed to state
20 in his testimony was that he has had numerous conversations with Mr. Stevens
21 regarding Lot 5 and at all times had direct access to Mr. Stevens. The private
22 placement memorandum that he signed was issued in error. It should also be noted
23 that Mr. Wong is a sophisticated investor and is also an accredited financial planner.

24 During the trial, Ms Ludetke recalled a witness to rebut some of Mr. Casimer
25 Polanchek's testimony. Unfortunately Mr. Polanchek would not return to the court
26 because he was advised that he would be arrested if he stepped foot on the property
27 because Ms Ludetke stated he disrespected her and her court. Unfortunately, this
28 person's claim could not be challenged. As a side note, this individual, who stated

1 financial hardship on the stand, stated outside of the court that she can wait for Lot 3
2 to be sold.

3 The Company is keeping abreast on the news coming out of the Rocky Point area and
4 was pleased to hear that the building of the International Cruise Port is going to
5 proceed, This will be a major boost to the Rocky Point area both financially and also
6 for the housing industry. While the company fully acknowledges that the notes have
7 not been satisfied, it is dedicated to continuing to work to sell Lot 47 and repay its
8 debt.

9 The company has paid for Lot 3 and is in the process of having it titled correctly via
10 Mexican law. As with Lot 47, the company is committed to selling the property and
11 repaying the note holders.

12 Charges of fraud have been alleged throughout the hearing process. These charges
13 are false.

14 Perhaps the best example of the antifraud provisions is Rule 10b-5 under the
15 Securities and Exchange Act. The language of the rule is:

16 Rule 10b-5: Employment of Manipulative and Deceptive Practices:

17 It shall be unlawful for any person, directly or indirectly, by the use of any
18 means or instrumentality of interstate commerce, or of the mails or of any
19 facility of any national securities exchange,

20 A) To employ any device, scheme, or artifice to defraud,

21 B) To make any untrue statement of a material fact or to omit to state a
22 material fact necessary in order to make the statements made, in the light of the
23 circumstances under which they were made, not misleading, or

24 C) To engage in any act, practice, or course of business which operates or
25 would operate as a fraud or deceit upon any person

26 In order for Rule 10b-5 to be invoked, there must be intentional fraud or deceit by the
27 party charged with the violation. Throughout the private placement memorandum
28 specific references were made as follows:

- 1 A) Any prospective note holder was advised to seek outside counseling as noted in
2 the following excerpts from the private placement memorandum:
3 1) THE RESALE OF THE NOTES IS LIMITED BY FEDERAL AND
4 STATE SECURITIES LAWS AND IT IS THEREFORE
5 RECOMMENDED THAT EACH POTENTIAL INVESTOR SEEK
6 COUNSEL SHOULD THEY DESIRE MORE INFORMATION.
7 2) The undersigned has been given the opportunity to review the merits of
8 an investment in the Offering with tax and legal counsel or with an
9 investment advisor to the extent the undersigned deemed advisable.
10 B) It was stated in the private placement memorandum that the Notes being
11 offered by the Company for the purchase of Mexican property would be
12 secured by the land Tri-Core Companies LLC purchases. This has been or is in
13 the process of being done in accordance with Mexican law
14 C) Tri-Core Companies LLC will establish an administration account which will
15 hold the title to the property until all note holders will be paid in full. This has
16 been done or will be done for properties that are in the process of being titled
17 correctly according to Mexican law.
18 D) Deeds would be held by Tri-Core Companies for the benefit of the note holders
19 as security for the note holders. This has been done or will be done for
20 properties that are in the process of being titled correctly according to Mexican
21 law.
22 E) It was stated that the Mexican properties were no titled in the Name of Tri-
23 Core Companies LLC. There is no wording in the private placement
24 memorandums that stated the properties would be in the name of Tri-Core
25 Companies LLC. All properties or property that is in the process of being
26 purchase have been and will be titled correctly under Mexican law at the
27 advice and direction of our Mexican attorneys. Tri- Core Companies could not
28 legally, under Mexican law, own property in the restricted zone under its name.
F) Company employees are allowed to sell notes as officers or directors of the
company for a private placement memorandum issued under Rule 506 of
Regulation D.
G) No public fraudulent statements were made.

1
2 In conclusion, this case is not as simple as Ms. Ludetke claims it to be. At no time
3 was there a scheme to defraud the note holders nor fraudulent actions taken. The
4 company always acted in the best interest of the note holders whether it was securing
5 property in accordance with the governing laws or the selling of a company in the
6 best interest of note holders. The company's actions were in accordance with
7 statements contained in the private placement memorandum and at no time did the
8 company publically advertise the terms of a private placement memorandum nor state
9 there was a private placement memorandum.

10
11 Dated this ___3rd___ day of July, 2014.

12
13 By 

14 Jason Todd Mogler, individually, and as
15 Manager of Tri-Core Companies, LLC and Tri-
16 Core Business Development, LLC
17 7014 N. 15th Street
18 Phoenix, AZ 85020
*Individual Respondent and Representative for
Corporate Respondents*

19 ORIGINAL AND 13 COPIES of the foregoing filed May ____, 2014, with:

20 Docket Control
21 Arizona Corporation Commission
22 1200 West Washington Street
23 Phoenix, Arizona 85007

24 COPIES of the foregoing mailed May ____, 2014, to:

25 Honorable Marc E. Stern
26 Administrative Law Judge
27 Arizona Corporation Commission / Hearing Division
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